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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY CMH DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOSE RAMIREZ-SALGADO,

Petitioner,

vs.

LARRY E. SCRIBNER, Warden,

Respondent.

CASE NO. 08cv562-WQH-WMc

ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation (Doc. 12) of Magistrate Judge William McCurine recommending that the Court deny the motion to dismiss the petition filed by Respondent.

On March 25, 2008, Petitioner Jose Ramirez-Salgado filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) On April 3, 2008, the Court dismissed the Petition without prejudice and with leave to amend. (Doc. 2.) On May 2, 2008, Petitioner filed his first amended petition naming Larry E. Scribner as the respondent. (Doc. 4.) On August 29, 2008, Respondent filed a motion to dismiss (Doc. 8), asserting that the Petition is barred by the applicable one year statute of limitations set by 28 U.S.C. § 2244(d)(1). Petitioner filed a timely opposition to Respondent's motion to dismiss (Doc. 10), asserting that his petition is not time barred because he is entitled to statutory and equitable tolling of the one year statute of limitations. On December 5, 2008, Magistrate Judge William McCurine issued the Report and Recommendation. (Doc. 12.) Neither party filed an

objection to the Report and Recommendation.

RULING OF THE COURT

The duties of the district court in connection with a Magistrate Judge's Report and Recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Where the parties object to a Report and Recommendation, "[a] judge of the [district] court shall make a de novo determination of those portions of the [Report and Recommendation] to which objection is made." 28 U.S.C.A. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). When no objections are filed, the district court need not review de novo the Report and Recommendation. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may nevertheless, "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *Wilkins v. Ramirez*, 455 F. Supp. 2d 1080, 1088 (S.D. Cal. 2006); *Or. Natural Desert Ass'n v. Rasmussen*, 451 F. Supp. 2d 1202, 1205 (D. Or. 2006).

Neither party objected to the Magistrate Judge's Report and Recommendation in this case, and this Court has reviewed the Report and Recommendation in its entirety. The Court concludes that the Magistrate Judge correctly determined that "Petitioner has filed his petition in federal court three-hundred seven (307) days into the applicable one (1) year, threehundred sixty-five (365) days, statute of limitations." (Doc. 12 at 10.)

IT IS HEREBY ORDERED that (1) the Report and Recommendation (Doc. 12) is adopted in its entirety, and (2) the motion to dismiss the petition (Doc. 8) filed by Respondent Larry Scribner is DENIED. Respondents shall file an answer with the Court and serve a copy on all parties within 30 days of the date of this order. Petitioner shall file his traverse with the Court and serve a copy on all parties no later than 30 days after the filing of Respondent's answer.

DATED: 1/21/09


 WILLIAM Q. HAYES
 United States District Judge